IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 100 OF 1999.

Shri Antonio J. Pimenta,
r/o Curtorim, Salcete, Goa.

1. Enio R.M.C. Pimenta (deceased).
2. Melba Elizabeth Socorro Pimenta de Souza & Mrs. Maria Adelina Filomena B. Pimenta.
3. Agnelo Milagres Jesus Pimenta and Mrs. Maria Adelina Filomena B. Pimenta.
4. Antonio Jawaharlal Pimenta and his wife Mrs. Maria L. de Souza Pimenta, r/o Margao, Salcete, Goa.
5. Shri Humberto Ashok Rabindra Pimenta and Mrs. Carmen da Costa Pimenta
6. Shri Aleixo Rajendra Azad Pimenta and his wife Mrs. Barbara da Costa Pimenta.
7. Francisco Elirio Pimenta.
8. Jose Felix Reginaldo Pimenta through Power of Attorney, the appellant No.4. .... Appellants.

Versus

1. Deputy Collector & Land Acquisition Officer, Panaji.
2. The Chief Town Planner, Panaji, Goa. .... Respondents.

Smt. A.A. Agni, Advocate for the Appellants.

Shri S.S. Kantak, Advocate General with Ms. L. Dharwadkar, Addl. Government Advocate for the Respondents.

CORAM: KSHITIJ R. VYAS, C.J. &
SMT. RANJANA DESAI, J.

DATE: 6th JUNE, 2006.

ORAL JUDGMENT: (PER KSHITIJ R. VYAS, C.J.)

The appellants in this appeal challenge the Judgment and Award dated 9.07.1999 passed in Land Acquisition Case No. 30/90 by the learned District and Sessions Judge, North Goa at Panaji dismissing the reference made by the appellants under Section 18 of the Land Acquisition Act.

2. The appellants are the owners in possession of the property bearing P.T. Sheet No. 153, Chalta No. 1(part) situated at Caranzalem within the city limits of Panaji Municipal Council. An area admeasuring 6193 sq. metres of the land referred to hereinabove was acquired by virtue of Notification under Section 4 of the Land Acquisition Act on 18.2.82 for the purpose of parks, recreational and other development of the area. The Land Acquisition Officer awarded Rs.75/- per sq.m. to the appellants. The appellants filed an application for reference under Section 18 of the Land Acquisition Act and claimed an amount of Rs.800/- per sq.m. in respect of the land in question as the land was situated within the city limits at a distance of two metres from Miramar circle. As stated above, the learned

trial Judge dismissed the reference.

3. The learned counsel for the appellants submitted that the learned trial Judge rejected the reference mainly on the ground that the appellants had failed to prove the sale deeds produced by the appellants. She submitted that the appellants are not required to prove the sale deeds in view of the law laid down by the Apex Court in ***Cement Corpn. Of India Ltd. v. Purya and Others reported in (2004) 8 SCC 270.***

4. We have gone through the record and proceedings and the reasoning of the learned District Judge. In order to substantiate the amount of Rs.800/- per sq. metre, the appellants have placed reliance on the valuation report, on a number of sale deeds and the report of the expert and evidence given by him. A Sale Deed dated 22nd December, 1982 in respect of the developed plot situated in Lake View Colony at Miramar was sold at the rate of Rs.429.86 and also on Sale deed dated 26.4.83 in St. Mary's Colony a developed plot which was sold at the rate of Rs.550/- per sq. metre and the sale deed dated 2.1.85 also of a developed plot in St. Mary's Colony at Miramar which was sold at the rate of Rs.800/- per sq.metre. The learned trial Judge by referring to the aforesaid sale deeds, observed that the appellants have not examined either the buyer or the seller of the three sale deeds. Over and above the aforesaid sale deeds, on behalf of the appellants, AW.2 Ribeiro Santana produced two awards of the

Court which arose in respect of this very acquisition. The first award is dated 14.11.94 (Exh.AW.2/D) and the same is in respect of P.T. Sheet No.143 Chalta No.35 and the second is dated 23.9.96 (Exh.AW.2/E) which is in respect of land of Chalta No.149/23 wherein the compensation was awarded by the L.A.O. at the rate of Rs.150/- per sq.m. was enhanced to Rs.230/- per sq. metre and in the latter case the compensation which was awarded by the L.A.O. At the rate of Rs.150/- per sq.metre was enhanced to Rs.209/- per sq.m.

5. In our opinion this appeal can be disposed of on the short ground namely that it is not necessary for the appellants to examine the vendor or vendee to prove the sale deeds and therefore it is not necessary for us to consider the other contentions submitted before us by the learned counsel for the appellants.

6. The Apex Court in the case of **Cement Corpn. of India Ltd.** (Supra) by construing the provisions of Section 51-A of the L.A. Act observed that:-

" The said provisions may be read literally and having regard to the ordinary meaning which can be attributed to the term "acceptance of evidence" relating to transaction evidenced by a sale deed, its

admissibility in evidence would be beyond any question. For bringing a documentary evidence on the record, the same must not only be admissible but the contents thereof must be proved in accordance with law. But when the statute enables a court to accept a sale deed on the record evidencing a transaction, nothing further is required to be done. Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof (emphasis supplied). This, however, would not mean that the contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word " may ". A discretion, therefore has been conferred upon a court to be exercised judicially i.e. upon taking into consideration the relevant factors. "

7. In para 31 of the Judgment, the Apex Court has further observed :-

" The reasoning in **Land Acquisition Officer & Mandal Revenue Officer v. V. Narasaiah (2001) 3 SCC 530,** that Section 51-A enables the party producing the certified copy of a sale transaction to rely on the contents of the document without having to examine the vendee or the vendor of that document, is the correct position in law ".

The above position, in our opinion, confers discretion upon a Court to accept the sale deeds as admissible evidence without examining the vendor or vendee after taking into consideration the relevant factors. In the instant case, the learned Trial Judge, without taking into consideration, the relevant factors, rejected the sale deeds produced on record on the sole ground that none of the sale deeds have been proved by examining either the vendor or vendee or witnesses to those deeds. The said reasoning, in our opinion, are required to be rejected in view of the law laid down by the Apex Court in the aforesaid case. Apart from the fact that a vendor or vendee are not examined in the said case, the appellants have, in fact, examined the expert who has produced his report by examining AW.2 Ribeiro Santana who has produced his report. From the evidence on record, the appellants have, in fact, proved the market value of the land. The learned Judge has not considered that aspect of the case also. In view of this, the Judgment and Award passed by the learned Reference Court is required to be set aside.

8. We, accordingly, set aside the Judgment passed in L.A.C. No.30/90. In our opinion, the matter is required to be decided afresh, in the light of the Judgment of the Apex Court in the case of Cement Corpn. Of India Ltd. v. Purya (2004) 8 SCC 270.

9. In the result, this appeal is allowed. The matter is remitted to the Reference Court, with a direction to decide the same afresh, in the light of the observations made above and in view of the Judgment passed by the Apex Court in the case of Cement Corpn. Of India Ltd. (Supra). In view of the statement made by the learned counsel for the appellants that no further evidence will be led by the appellants and they will simply rely on the documents already produced on record, for which no further proof is required and since the Reference Court to decide the matter on those documents only for the purpose of determining the market value, the reference Court shall decide the same as early as possible and in any case not later than 30th July, 2006. The office shall forward the records and proceedings to the trial Court forthwith. Parties shall appear before the trial Court on 14th June, 2006 at 10.00 a.m.

KSHITIJ R. VYAS, C.J

SMT. RANJANA DESSAI, J.

sl.